

REMARKS

Claims 1–54 and 59 are cancelled. Claims 55–58 and 60–92 are currently pending. Claims 65–72, 74–83, and 85 are withdrawn from consideration. Claims 55, 57–58, 62–64, 84, 86–90 are currently amended. Claims 91 and 92 have been added. Claims 55–64, 73, 84, 86, 87, 89 and 90 were rejected in the Office Action dated October 16, 2009, and the matters raised in the Office Action will be addressed in the same order presented therein.

I. Rejection of Claims 55-59, 61, 62, 87, 89, and 90 Under 35 U.S.C. § 102(b)

Claims 55 through 59, 62, 87, 89 and 90 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,249,963 (McGarrigle). McGarrigle, as shown in Figure 4 of that reference, was said to include the elements of independent claim 55. Applicants respectfully disagree.

Claim 55 is currently amended to further clarify an aspect of the invention not disclosed or suggested by McGarrigle: a container containing at least one dental substance and being sealed with a breakable seal. This feature is clearly illustrated in the Figures and described in the application as filed and was previously recited in claim 65. The breakable seal preferably provides both an air-tight and tamper-evident seal which preferably ensures an intact and unused package assembly. To anticipate, a single reference must teach every limitation of the claimed invention. Because McGarrigle does not disclose the breakable seal, McGarrigle cannot anticipate claim 55. For at least this reason, the invention of independent claim 55 is believed to be patentable under 35 U.S.C. 102(b) over McGarrigle.

The remaining dependent claims rejected under Section 102 over McGarrigle include all of the limitations of independent claim 55, and are therefore patentable for at least the same reasons. Reconsideration of the rejection of those claims is also requested. Applicants additionally note that certain features recited in the dependent claims are not disclosed in or suggested by McGarrigle, including the features of claims 91 and 92. These claims add to the features of claim 55 that the breakable seal of the package assembly can be broken by pushing the lid in a direction substantially towards the container, and that an appendage is created at the breakable seal during activation providing a friction fit between the lid and second end of the

container when the lid is pushed onto the container, respectively. Accordingly, the dependent claims, specifically including claims 91 and 92, are believed to be allowable.

II. Rejection of Claims Under 35 U.S.C. § 103

Claims 60 and 87 were rejected under 35 U.S.C. 103 as being unpatentable over McGarrigle in view of U.S. Patent No. 5,204,130 (McDevitt et al.). Claims 63, 64, 84, 86, and 87 were rejected under 35 U.S.C. 103 as being unpatentable over McGarrigle in view of U.S. Patent No. 5,938,018 (Keaveney et al.). Lastly, claims 73 and 87 were rejected under 35 U.S.C. 103(a) as being unpatentable over McGarrigle in view of U.S. Patent No. 5,660,273 (Discko, Jr.).

Each of the above mentioned dependent claims includes the limitations of claim 55. Claim 55 is patentable over McGarrigle for the reasons discussed above. Specifically, McGarrigle does not disclose or suggest the breakable seal. McDevitt et al., Keaveney et al., and Discko, Jr. do not remedy the absence in the disclosure of McGarrigle of the claimed breakable seal and thus do not render claim 55 obvious either standing alone or together with McGarrigle. Because the combination of McGarrigle and McDevitt et al., Keaveney et al., or Discko, Jr. do not render claim 55 obvious, the remaining claims depending on claim 55 cannot be rendered obvious by the above references. Reconsideration of the rejection is respectfully requested.

Further, independent claim 87 has been further amended to clarify the invention, specifically by including a step of providing a package assembly wherein, inter alia, the container contains at least one dental substance and is sealed with a breakable seal, and including a step of pressing the lid in the direction of the container to break the seal. As described above, because the above references, individually or in combination, do not disclose or suggest the steps of claim 87, claim 87 is patentable over McGarrigle and McDevitt et al., Keaveney et al., or Discko, Jr. Reconsideration of the rejection is respectfully requested.

IV. Conclusion

For the reasons noted above, the pending claims are believed to be in condition for allowance, and reconsideration of the application is respectfully requested. If a telephonic conference would be useful in addressing any remaining matters in the application, the Examiner is invited to contact the Applicants' undersigned representative at 651-736-4050.

Respectfully submitted,

January 12, 2010

Date

By: /Peter L. Olson/

Peter L. Olson, Reg. No.: 35,308

Telephone No.: 651-736-4050

Office of Intellectual Property Counsel
3M Innovative Properties Company
Facsimile No.: 651-736-3833